

**ARTICLE 89-03
WATER APPROPRIATIONS**

**CHAPTER 89-03-03
DEFINITIONS**

Section 89-03-03-02 is amended as follows:

89-03-03-02. Definition of domestic rural use. For the purpose of North Dakota Century Code section 61-04-01.1, "domestic rural use" means two or more family units or households obtaining water from the same system for personal needs and for household purposes, including, ~~but not limited to,~~ heating, drinking, washing, sanitary, and culinary uses; irrigation of land not exceeding ~~one acre [.40 hectare]~~ five acres [2.0 hectares] in area for each family unit or household for noncommercial gardens, orchards, lawns, trees, or shrubbery; and for household pets and domestic animals kept for household sustenance and not for sale or commercial use.

History: Effective November 1, 1989; amended effective January 1, 2010.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-04-01.1

**ARTICLE 89-10
SOVEREIGN LANDS**

**CHAPTER 89-10-01
SOVEREIGN LANDS**

Section	
89-10-01-01	Authority
89-10-01-02	Prohibition on Permanent Relinquishment
89-10-01-03	Definitions
89-10-01-04	Authorization
89-10-01-05	Application for Permit, Easement, Lease, or Management Agreement
89-10-01-06	Application Review
89-10-01-07	Public Meeting
89-10-01-08	General Permit Standards
89-10-01-09	Specific Project Requirements
89-10-01-10	Projects Not Requiring a Permit
89-10-01-10.1	Boat Docks, Boat Ramps , and Water Intakes
<u>89-10-01-10.2</u>	<u>Boat Dock Registration</u>
89-10-01-11	Structures
89-10-01-12	Public Recreational Use
89-10-01-13	Vehicular Access
89-10-01-14	Cancellation by the State Engineer
89-10-01-15	Termination by Applicant
89-10-01-16	Assignments
89-10-01-17	Inspections
89-10-01-18	Reclamation
89-10-01-19	Maintenance and Repair
89-10-01-20	Areas of Special Interest
89-10-01-21	Organized Group Activities
89-10-01-22	Pets
89-10-01-23	Camping
89-10-01-24	Hunting, Fishing, and Trapping
89-10-01-25	Unattended Watercraft
89-10-01-26	Removal of Public Property
89-10-01-27	Cultural or Historical Resources
89-10-01-28	Disposal of Waste
89-10-01-29	Glass Containers
89-10-01-30	Abandoned Property
89-10-01-31	Firearms
89-10-01-32	Tree Stands
89-10-01-33	Baiting
<u>89-10-01-34</u>	<u>Dredging or Filling</u>

Section 89-10-01-03 is amended as follows:

89-10-01-03. Definitions. The following definitions apply to this article:

1. "Authorization" means a permit, easement, lease, or management agreement approved and granted by the state engineer after application; and the authority granted in sections 89-10-01-10 and 89-10-01-19.
2. "Boardwalk" means a walk constructed of planking.
3. "Domestic use" means the use of water for household purposes and irrigation of gardens, lawns, and shrubbery surrounding a house. "Domestic use" does not include the use of water for irrigation of more than five acres [2.0 hectares] and the use of water for carrying on a business.
4. "Grantee" means the person, including that person's assigns, successors, and agents who are authorized pursuant to an authorization.
45. "Navigable waters" means any waters which were in fact navigable at time of statehood, that is, were used or were susceptible of being used in their ordinary condition as highways for commerce over which trade and travel were or may have been conducted in the customary modes of trade on water, including the Missouri River, the Yellowstone River, the Red River of the North from Wahpeton to the Canadian border, the Bois De Sioux River from Wahpeton to the South Dakota border, the James River, the Upper Des Lacs Lake, Devils Lake, Painted Woods Lake, and Sweetwater Lake.
56. "Ordinary high watermark" means that line below which the action of the water is frequent enough either to prevent the growth of vegetation or to restrict its growth to predominantly wetland species. Islands in navigable waters are considered to be below the ordinary high watermark in their entirety.
67. "Project" means any activity which occurs either partially or wholly on sovereign lands.
78. "Riparian owner" means a person who owns land adjacent to navigable waters or the person's authorized agent.
89. "State engineer" means the state officer provided for in North Dakota Century Code section 61-03-01 or any of the state engineer's employees or authorized agents.

910. "Structure" means something that is formed from parts, and includes boat docks, boat ramps, and water intakes.

History: Effective November 1, 1989; amended effective August 1, 1994; April 1, 2008; April 1, 2009; January 1, 2010.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-33

Section 89-10-01-10 is amended as follows:

89-10-01-10. Projects not requiring a permit. The following projects do not require a permit:

1. Boat docks if all of the following conditions are satisfied:
 - a. They are constructed, operated, and maintained by the riparian owner or the riparian owner's lessee for the riparian owner's or lessee's personal use;
 - b. The dock is used only for embarkation, debarkation, moorage of boats, water intakes, or recreation;
 - c. Only clean, nonpolluting materials are used;
 - d. The total length of the dock over the surface of the water does not ~~extend exceed more than~~ twenty-five feet [7.6 meters] ~~in length from the edge of the water~~ on a river and fifty feet [15.24 meters] ~~in length from the edge of the water~~ on a lake, and there is no unreasonable interference with navigation or access to an adjacent riparian owner's property;
 - e. The dock is connected to a point above the ordinary high watermark by a boardwalk that does not exceed twenty-five feet [7.6 meters] in length, and is removed from below the ordinary high watermark each fall;
 - f. ~~There is no excavation or filling below the ordinary high watermark in excess of that authorized in subsection 4; and~~
 - g. Upon abandonment, the grantee restores the bank as closely as practicable to its original condition.

2. ~~Boat ramps if all of the following conditions are satisfied:~~
- a. ~~They are constructed, operated, and maintained by the riparian owner or the riparian owner's lessee for the riparian owner's or lessee's personal use;~~
 - b. ~~Excavation of the bank is limited to the minimum width necessary for the placement of a single lane boat ramp adjacent to privately owned property or a double lane boat ramp adjacent to publicly owned property;~~
 - c. ~~Material excavated from the bank is removed to a location above the ordinary high watermark;~~
 - d. ~~Only such clean, nonpolluting fill and riprap material free of waste metal, organic materials, and unsightly debris are placed below the ordinary high watermark as necessary to construct and stabilize the boat ramp; and~~
 - e. ~~Upon abandonment, the grantee restores the bank as closely as practicable to its original condition.~~
3. ~~Water intakes if all of the following conditions are satisfied:~~
- a. ~~They are constructed, operated, and maintained by the riparian owner or the riparian owner's lessee for riparian owner's or lessee's personal domestic use; and~~
 - b. ~~Excavation of the bank is limited to the minimum width necessary to install and maintain the water intake;~~
 - c. ~~Materials excavated from the bank are removed to a location above the ordinary high watermark;~~
 - d. ~~The intake is entirely removed from sovereign lands each fall; and~~
 - e. ~~Upon abandonment, the grantee restores the bank as closely as practicable to its original condition.~~
4. ~~Dredging or filling if all of the following conditions are satisfied:~~
- a. ~~The work is completed and maintained by the riparian owner or the riparian owner's lessee;~~
 - b. ~~The amount of dredge or fill material does not exceed ten cubic yards as part of a single and complete project;~~

- c. ~~No stream diversion results;~~
- d. ~~No extension of a claim of ownership to sovereign lands results; and~~
- e. ~~Only clean, nonpolluting material free of waste metal, organic materials, and unsightly debris is used.~~

53. Boats that are temporarily moored.

History: Effective November 1, 1989; amended effective August 1, 1994; April 1, 2009; January 1, 2010.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-33

Section 89-10-01-10.1 is amended as follows:

89-10-01-10.1. Boat docks, ~~boat ramps~~, and water intakes. Boat docks, ~~boat ramps~~, and water intakes not meeting the criteria in 89-10-01-10 require a permit from the state engineer. Any person who violates this section is guilty of a noncriminal offense and shall pay a two hundred fifty dollar fee.

History: Effective April 1, 2009; amended effective January 1, 2010.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-33

Section 89-10-01-10.2 is created as follows:

89-10-01-10.2. Boat dock registration. Boat docks that do not require a permit under this chapter and that are located on the Missouri River between the Oliver/Morton county line (river mile 1328.28) and Lake Oahe wildlife management area (river mile 1303.5) south of Bismarck must be registered with the state engineer prior to placement of any such dock. The state engineer shall provide registration forms. Any person who violates this section is guilty of a noncriminal offense and shall pay a two hundred fifty dollar fee, and the dock may be subject to removal at the dock owner's expense.

History: Effective January 1, 2010.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-33

Section 89-10-01-11 is amended as follows:

89-10-01-11. Structures. Except as otherwise provided in this chapter, the construction or moorage of a structure is prohibited on sovereign lands. If a structure is ~~constructed on or moored to sovereign lands~~ prohibited, the state engineer shall:

1. Issue an order identifying the action required to modify, remove, or otherwise eliminate the structure and a date by which the ordered action must be taken. Unless an emergency exists, the date by which the ordered action must be taken shall be at least twenty days after the order is issued.
2. If the ordered action is not taken by the date specified in the order, the state engineer may modify, remove, or otherwise eliminate the structure.
3. The state engineer may commence a civil proceeding to enforce an order of the state engineer, or, if the state engineer modifies, removes, or eliminates the structure, the state engineer may assess the fees and costs of such action against any property of the person responsible for the structure; or may commence a civil proceeding to recover the costs incurred in such action. If the state engineer chooses to recover costs by assessing the cost against property of the person responsible for the structure and the property is insufficient to pay for the costs incurred, the state engineer may commence a civil proceeding to recover any costs not recovered through the assessment process. Any assessment levied under this section must be collected in the same manner as other real estate taxes are collected and paid.
4. Within ten days of the date the order is issued, a person who receives an order from the state engineer under this section may, send a written request to the state engineer for a hearing. The request for a hearing must state with particularity the issues, facts, and points of law to be presented at the hearing. If the state engineer determines the issues, facts, and points of law to be presented are well-founded and not frivolous, and the request for a hearing was not made merely to interpose delay, the state engineer shall set a hearing date without undue delay.
5. Any person aggrieved by the action of the state engineer may appeal the decision to the district court of the county in which the sovereign lands at issue are located in accordance with North Dakota Century Code chapter 28-32. A request for a hearing as provided in subsection 4, is a prerequisite to any appeal to the district court.

History: Effective November 1, 1989; amended effective August 1, 1994; April 1, 2008; April 1, 2009; amended January 1, 2010.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-33, 61-03-21.3, 61-03-22

Section 89-10-01-34 is created as follows:

89-10-01-34. Dredging or filling. Unless permitted by the state engineer, dredging or filling on sovereign lands is prohibited. If prohibited dredging or filling occurs, the state engineer shall:

1. Issue an order identifying the action required to restore the sovereign lands and a date by which the ordered action must be taken.
2. If the ordered action is not taken by the date specified in the order, the state engineer may take any action to restore the sovereign lands.
3. The state engineer may commence a civil proceeding to enforce an order of the state engineer, or, if the state engineer takes action to restore sovereign lands, the state engineer may assess the costs of such action against the property where the dredging or filling occurred, or may commence a civil proceeding to recover the costs incurred in such action. If the state engineer chooses to recover costs by assessing the costs against property where the dredging and filling occurred and the property is insufficient to pay for the costs incurred, the state engineer may commence a civil proceeding to recover any costs not recovered through the assessment process. Any assessment levied under this section must be collected in the same manner as other real estate taxes are collected and paid.
4. Within ten days of the date the order is issued, a person who receives an order from the state engineer under this section may send a written request to the state engineer for a hearing. The request for a hearing must state with particularity the issues, facts, and points of law to be presented at the hearing. If the state engineer determines the issues, facts, and points of law to be presented are well-founded and not frivolous, and the request for a hearing was not made merely to interpose delay, the state engineer shall set a hearing date without undue delay.
5. Any person aggrieved by the action of the state engineer may appeal the decision to the district court of the county in which the sovereign lands at issue are located in accordance with North Dakota Century Code chapter 28-32. A request for a hearing as provided in subsection 4 is a prerequisite to any appeal to the district court.

History: Effective January 1, 2010.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-33, 61-03-21.3, 61-03-22